

1979 WL 42928 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 16, 1979

***1 Re: Accrual of Annual Leave**

Dr. Jack S. Mullins
Budget and Control Board
Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have asked this Office for its opinion as to whether state employees may receive annual leave credit during periods of leave without pay.

It is the opinion of this Office that all State agencies, departments and institutions (with the exception of teaching personnel and officials of academic rank at State-supported institutions of higher learning) are not authorized to extend annual leave credit to employees for periods of leave without pay. Sections 8-11-660 and 8-11-680. Section 8-11-660 provides:

Employees shall not be credited with leave earnings for any month in which they are not in pay status for one half or more of the workdays of the month. (Emphasis added).

Plainly, in order for an employee to be credited with annual leave credit, that employee must be in pay status.

Ms. Laura Sarvis maintains that based upon the Maternity Leave Act of 1972 and the United States Supreme Court decision, [Nashville Gas Company v. Satty](#), 434 U.S. 136 (1977), she is entitled to annual leave credit for two five month periods of maternity leave. I do not believe this to be the case. Firstly, the Maternity Leave Act to which she refers, was repealed in 1974 and the Sick Leave Act, [§ 8-11-40 of the Code](#), was enacted simultaneously. Secondly, even if the Maternity Leave Act were not repealed Ms. Sarvis could not earn annual leave while on maternity leave inasmuch as Section 6 of the Maternity Leave Act provided . . . '[n]o leave or pay benefits may be earned during such period of maternity leave.'

In [Nashville Gas Company v. Satty](#), the employer denied women the right to use sick leave while out of work for childbearing and the employer deprived women of accumulated seniority when these employees returned to work following disability due to childbirth. The Supreme Court held that it was illegal to deprive women of their accumulated seniority because they took maternity leave but the Supreme Court refused to say that the sick pay policy was illegal since the plaintiff had not yet proved that the policy was a 'pretext designed to effect an invidious discrimination against the members of one sex or the other.' [434 U.S. at 145](#). Accordingly, after reviewing Ms. Sarvis' claim I can see no bearing of the [Satty](#) case on her claim unless she is able to prove that the Sick Leave Act is a pretext for discrimination on the basis of sex.

Sincerely,

Barbara J. Hamilton
State Attorney

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